

Before the
FEDERAL COMMUNICATIONS COMMISSION

| | | |
|-----------------------------------|---|----------------------|
| In the matter of |) | |
| |) | |
| Digital Broadcast Copy Protection |) | MB Docket No. 02-230 |
| |) | |
| |) | |

**COMMENTS OF
THE CENTER FOR DEMOCRACY AND TECHNOLOGY**

December 6, 2002

In the matter of
Digital Broadcast Copy Protection
MB Docket No. 02-230

COMMENTS OF THE CENTER FOR DEMOCRACY AND TECHNOLOGY

The Center for Democracy and Technology (hereafter “CDT”) hereby submits comments in connection with the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceeding. CDT is a non-profit, public interest group dedicated to promoting civil liberties and democratic values in new digital media. In its eight years of existence, CDT has sought to bring expertise in technology, policy, and law to bear on critical Internet policy issues, including free expression, privacy, and recently, digital copyright issues. We seek to inject a perspective based on the reasonable interests of consumers and computers users into this debate.

We are pleased to have this opportunity to comment on the NPRM and copy protection systems for broadcast digital television. We commend the FCC for putting forward an NPRM that seeks answers to the hard questions surrounding copy protection in this new medium.

* * *

CDT supports legal and technical mechanisms to protect copyrighted works in the digital age. Piracy of digital works has emerged as a tremendous concern for copyright owners, and for consumers as well. It is to be expected that content owners will be wary of distributing content in digital environments without ways to protect their property from widespread illegal copying. Consumers also have an interest in protecting copyright to appropriately compensate artists and authors, and to promote the availability of high quality content.

At the same time, it is fair for consumers to ask how copyright protection mechanisms will impact their use of content and their access to computing and communications technologies, including the Internet. This is especially true when law or regulation is involved, though law has been and will be an important element of copyright protection. For these reasons the NPRM appropriately raises questions about the *potential* impact of the broadcast flag on the use of digital programming by consumers, their reasonable copying of programs, and the downstream impact of requirements on computers and the Internet. We note that there are a number of different possible implementations of the broadcast flag concept, some of which will yield different answers than others.

CDT is currently engaged in an intensive dialog with key stakeholders in the content, information technology, and consumer electronics industries, seeking answers to many of these same questions. We are looking for answers to craft a reasonable consumer perspective on how to protect copyright in the digital age consistent with new business models, new uses of content, and the decentralized, user-controlled nature of computing and the Internet. That dialogue and fact-finding is underway, and we are not in a position to pre-judge its outcome.

We urge the Commission to consider consumer and computer user interests as the broadcast flag is evaluated. We hope that the dialogue CDT is conducting with consumer partners and industry stakeholders will also produce useful criteria for evaluating the flag and other copy protection options. We look forward to sharing the results of our dialogue process with the Commission and others.

We appreciate your efforts on behalf of the public's interest in digital copyright and new digital media and thank the Commission for its thoughtful inquiry.

Respectfully submitted,

Jerry Berman
Alan Davidson
Center for Democracy and Technology
1634 I St. NW Suite 1100
Washington, DC 20006
(202) 637-9800

December 6, 2002